

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**ALAN MCFADDEN**

**PLAINTIFF**

**VS.**

**CIVIL ACTION NO. 3:06CV324WA**

**WILLIE ABSTON; ERRICKSON AIR-  
CRANE; NISSAN OF NORTH AMERICA,  
Canton, MS, Division and ENCOMPASS  
IVYES MECHANICAL**

**DEFENDANTS**

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**ORDER**

This matter came before the court on the Plaintiff's Motion for Sanctions and his Motion for Leave to File Amended Complaint. The Motion for Sanctions relates to the procedure by which the Defendants notified the court that the parties had consented to the exercise of jurisdiction by a Magistrate Judge. Any violation of Uniform Local Rule 73.1(B) that occurred was purely technical in nature and not grounds for sanctions; therefore, that Motion will be denied.

The Plaintiff also seeks leave to file an Amended Complaint to state additional causes of action under federal statutes. The Case Management Plan Order entered in this matter set a deadline for amending pleadings of November 27, 2006, and the Plaintiff's Motion is timely. The Defendants object to it on grounds of futility, as well as their assertion that the attempt to amend is harassing and done in bad faith. Refusing to permit an amendment on grounds of futility has the effect of disposing of the amended claims, an act not within the authority of a United States Magistrate Judge. Moreover, the undersigned, having reviewed the pleadings, is of the opinion that this *pro se* Plaintiff's attempt to amend his complaint to avoid dismissal constitutes neither harassment nor bad faith, especially at this stage of the litigation. If the Defendants are correct in their assertion that the amendment is completely futile as a matter of law, then the additional burden of presenting that

argument to the court will be relatively slight, and that burden does not outweigh the court's responsibility to liberally permit a *pro se* plaintiff to amend his complaint to avoid dismissal.

IT IS, THEREFORE, ORDERED that the Plaintiff's Motion for Sanctions is hereby **denied**, and his Motion for Leave to File Amended Complaint is hereby **granted**. The Amended Complaint, in the form attached to the Plaintiff's Motion, shall be filed and served on the Defendants on or before January 31, 2007.

IT IS SO ORDERED, this the 29<sup>th</sup> day of December, 2006.

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S/Linda R. Anderson  
UNITED STATES MAGISTRATE JUDGE